

THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP)



Policy and Procedure Manual

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In California, the Emergency Food Assistance Program (TEFAP) is administered by the California Department of Social Services (CDSS), located at 744 P Street, Mail Station (MS) 19-51, Sacramento, California 95814. The Food Distribution Unit (FDU) administers the United States Department of Agriculture (USDA) donated commodity distribution program throughout California. Currently, 48 agencies serve all 58 counties within California.

Information on the TEFAP program can be obtained by contacting the office at (916) 229-3344 or by visiting the TEFAP website on the internet at <http://www.cdss.ca.gov/inforesources/EFAP>.

The Policy and Procedure Manual for TEFAP is designed to serve as a guide to Title 7, Code of Federal Regulations (CFR), Parts 250, and 251 that pertain to TEFAP, as well as to outline TEFAP policies and procedures for program compliance.

Description:

The TEFAP provides low-income individuals and households with surplus commodities donated by USDA to supplement daily nutritional needs. The TEFAP was not designed to satisfy *all* hunger needs or nutritional requirements of individuals or households. Program-eligible recipients may receive commodities through distribution sites that distribute packaged food for household consumption, or through congregate feeding sites that serve meals.

Under a Memorandum of Understanding (MOU), the CDSS work together with the California Emergency Foodlink (CEFL), a private non-profit agency to administer the TEFAP. The CDSS also enters into MOUs with Eligible Recipient Agencies (ERAs) throughout California, in each county, to serve as a distribution network for TEFAP. The ERAs establish sub-ERAs, also referred to as distribution sites, to disburse the USDA commodities to eligible recipients. Through the TEFAP network, eligible recipients may also receive privately donated products through the Donate/Don't Dump (DDD) program as well as products donated to the TEFAP through local solicitation efforts of the ERAs. The CEFL serves as the operational arm of the TEFAP to order, receive, store, and transport USDA and DDD product to ERAs in the TEFAP network.

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|---|--|
| (2.1) <u>Bill of Lading (BOL)</u> | Primary shipping document that records the delivery, condition, and type of commodities upon receipt of specified commodities. |
| (2.2) <u>California Emergency Foodlink (CEFL)</u> | A private, non-profit organization that operates under a Memorandum of Understanding (MOU) with the California Department of Social Services (CDSS). In addition to transporting USDA donated commodities to smaller agencies, CEFL, under the direction of CDSS, operates the statewide Donate Don't Dump (DDD) program and orders, receives, packages, stores, transports, and/or distributes food products to eligible recipient agencies (ERAs). |
| (2.3) <u>Charitable Institution</u> | An organization which is public, or is private, possessing tax-exempt status; and is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and, provides food assistance to needy persons (7 CFR, 251.3(b)). |
| (2.4) <u>Congregate Feeding Agency</u> | A public or charitable institution (also known as a soup kitchen) that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy and homeless persons on a regular basis (7 CFR, 251.3(j)). |
| (2.5) <u>Commodities</u> | Foods donated or available for donation, by USDA (7 CFR, 250.3). |
| (2.6) <u>Consignee</u> | The receiving Eligible Recipient Agency (ERA) to which commodities are shipped sometimes referred to as the receiver. |
| (2.7) <u>Delivery Order (DO)</u> | An order number for a specific commodity designating quantity, delivery period, and destination. Each order is identified by a three-part code that includes the Distributing Agent Number, the alpha code assigned to the delivery period requested, and the sequential order number. |

- (2.8) Demurrage A penalty charge assessed by motor carriers/railroads for cars held by shippers or receivers of freight beyond a specified free time.
- (2.9) Detention A penalty charge assessed by motor carriers or piggyback companies for detaining equipment beyond a specified free time. Mechanical detention occurs when rail cars are detained beyond a specified free time.
- (2.10) Disaster Any natural catastrophe which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused. Any other occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe (7 CFR, 250.3).
- (2.11) Disaster Organizations Organizations authorized by appropriate Federal or State officials to assist disaster victims (7 CFR, 250.3).
- (2.12) Distribution Site (DS) Location(s) where eligible recipient agencies distribute commodities to needy persons for household consumption or serves prepared meals to needy persons under this part (7 CFR, 251.3(c)).
- (2.13) Diversion Charge Occurs when the truck driver is asked by the ERA to deliver the load to a destination other than the one that is listed on the delivery order.
- (2.14) Donated Foods Foods donated, or available for donation, by USDA (7 CFR, 250.3) - see Commodities).

- (2.15) Dunnage Material used to protect or support freight during transit.
- (2.16) Eligible Recipient Agency (ERA) An organization which –
- 1) is public, or
 - 2) is private, possessing tax exempt status (7CFR, 251.5(a)(3)); and
 - 3) is not a penal institution, and
 - 4) provides food assistance exclusively to needy persons for household consumption, pursuant to a means test, or predominantly to needy persons in the form of prepared meals, and
 - 5) has entered into a Memorandum of Understanding (MOU) with the state for the receipt of commodities and/or administrative funds, or receives commodities and/or administrative funds under an agreement with another ERA which has signed an MOU with the state, and
 - 6) falls into one of the following categories: emergency feeding organizations (food banks, food pantries, soup kitchens); charitable institutions (hospitals, retirement homes); summer camps for children or child nutrition programs providing food service; nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly); and disaster relief programs (7 CFR, 251.3(d)).
- (2.17) Emergency Feeding Organization (EFO) An ERA that provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income homeless and unemployed persons. EFOs have priority over ERAs in the distribution of USDA commodities (7 CFR, 251.3(e)).

Clarification: EFOs are a subset of ERAs. An EFO provides food assistance to relieve situations of emergency and distress to needy persons, including the low-income and unemployed. The category of EFO excludes such agencies as hospitals, retirement homes, group homes, child and elderly nutrition programs, etc. EFOs do include food banks, food pantries, and soup kitchens. Since enough food does not exist to meet the needs of all ERAs under the general category, the distinction between ERAs and EFOs and the two-tier priority system was developed to prioritize the neediest (7 CFR, 251.3(e) and 251.4(i) & (ii)).

- (2.18) Sub-Eligible Recipient Agency (Sub-ERA) An organization which -
- 1) is public, or
 - 2) is private, possessing tax exempt status (7 CFR, 251.5 (a)(3)(i)(ii)(iii)(iv)),
 - 3) is not a penal institution, and
 - 4) has entered into an agreement with an ERA to distribute USDA commodities without cost to agencies having an agreement with that ERA, or with the ERA to distribute such commodities to recipients
- (2.19) Federal Fiscal Year (FFY) The period of 12 months beginning October 1 of any calendar year and ending September 30 of the following year (7 CFR, 250.3).
- (2.20) First In-First out (FIFO) The first commodities that are received by the ERA are also the first commodities to be issued to the sites for distribution.
- (2.21) Floor Loaded Commodities that are not on pallets, including slip-sheeted and floor stacked.
- (2.22) Food Bank A public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.
- (2.23) Food Pantry A public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than USDA, to relieve situations of emergency and distress.
- (2.24) Free Time The amount of time allowed by the carriers for the loading or unloading of freight before demurrage or detention charges begins to accrue.

- (2.25) Gross Weight The weight of an article, together with the weight of its container and the material used for packing.
- (2.26) Household A group of related or non-related individuals, exclusive of boarders, who are not residents of an institution, but who are living as one economic unit and for whom food is customarily purchased and prepared in common. It also means a single individual living alone (7 CFR, 250.3).
- (2.27) In-Kind Replacement Replacement of lost donated foods with a quantity of the same foods of U.S. origin that are of equal or better quality than the lost foods and that are of at least equal monetary value to the USDA's cost of replacing the lost foods (7 CFR, 250.3).
- (2.28) Lading The freight that consists of a load.
- (2.29) Needy Persons
- A) Persons provided service by charitable institutions, who, because of their economic status, are in need of food assistance,
 - B) All the members of a household who are certified and in need of food assistance, and
 - C) Disaster Victims (7 CFR, 250.3).
- (2.30) Net Weight The weight of an article, clear of packing and container.
- (2.31) Pallet A small portable platform for holding material for storage or transportation.
- (2.32) Pallet Exchange To trade pallets of equal quantity and quality for those delivered with shipment.
- (2.33) Palletize To place commodities on a pallet.
- (2.34) Piggyback The transportation of a trailer or container on railroad flat cars.

- (2.35) Pool Car A rail car loaded, sent to a trans-load, or break-bulk point, and transferred into trucks for final delivery, usually to different locations.
- (2.36) Privately Donated Products Products that are donated by private individuals and organizations to TEFAP. There are two types: those donated to the state's DDD program and those that ERAs obtain through local solicitation efforts.
- (2.37) Recipients Persons receiving donated foods, or meals containing donated foods, provided by recipient agencies (7 CFR, 250.3).
- (2.38) Seal A device applied to freight car or motor vehicle door fastening to show that tampering has not taken place between the time of application and fastening, or during the loading process and breakage of seal at the designated place of unloading.
- (2.39) Similar Replacement Replacement of lost donated foods with a quantity of similar foods of U.S. origin of the same types as those normally donated by the Department and of at least equal monetary value to the Department's cost of replacing the lost foods (7 CFR, 250.3).
- (2.40) Slip Sheet Usually a piece of cardboard (may be plastic or another material) used in place of a pallet to handle unitized commodities which is floor loaded with a push/pull attachment.
- (2.41) Soup Kitchen A public or charitable institution that, as an integral part of their normal activities, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.
- (2.42) Storage Charges A monthly storage cost assessed to the ERA due to a commodity diversion that result in commodities being stored in other than the ERA's initially designated place of storage.

- (2.43) Tailgate To move commodities to the back end of the trailer for purposes of unloading.
- (2.44) Tariff A printed price list by the carrier showing transportation charges and services provided for these charges.
- (2.45) Unitize To band together and/or stretch or shrink-wrap cartons, cases, or bag goods into a single unit and place on a pallet or platform for shipping.

(3.1) USDA Funding Formula Applied to States

The amount of Federal funding provided to each state is based on a 60/40 formula. The 60/40 formula is derived from 60 percent of the number of persons in households within the state having incomes below the Federal poverty level (based on the most current Census data) and 40 percent of the number of unemployed persons within the state (7 CFR, 251.3(h)).

(3.2) CDSS Funding Formula Applied to ERAs

Once California receives its share of the Federal funding, the CDSS in turn provides funding to each food bank in the TEFAP network. Funding is provided based on the 60/40 formula as well; however, each ERA first receives a base of \$40,000. The remaining funds are then based 60 percent on the number of persons in households within the food bank distribution area (or county) having incomes below the Federal poverty level and 40 percent on the number of unemployed persons within that area. CDSS uses the most current Census data for the Federal poverty level and averages of unemployment data obtained from the Employment Development Department once per year to determine 60/40 percentages.

(3.3) USDA Bonus Commodity Allocation to States

The bonus USDA commodities are allocated to states depending on quantities available nationally. The allocation formula for commodities is based on the 60/40 formula (7 CFR, 251.3(h)).

When a commodity is available in limited quantities, USDA will allocate the commodities among the states using the 60/40 formula (7 CFR, 250.13(4)).

(3.4) CDSS Commodity Allocation to ERAs

The USDA commodities must be distributed only to ERAs and distribution sites who are eligible to receive them (7 CFR, 251.4(h)).

CDSS allocates commodities to each food bank its fair share entitlement funds that are used to purchase USDA commodities from a commodity list. County shares are calculated based 60 percent on the number of persons in households within the food bank's county having incomes below the Federal poverty level and 40 percent on the number of unemployed persons within that area. Bonus commodities are allocated based on the same 60/40 formula (7 CFR, 251.3 (h)).

ERAs may not use food purchased for TEFAP to meet the food supply needs of their other programs. CDSS must require that ERAs receiving commodities not diminish their normal expenditures for food due to receipt of USDA commodities. Commodities must be withheld from distributions if it is determined that the commodities would substitute for the same or a similar product that would otherwise be purchased in the market (7 CFR, 251.4 (b)).

The ERAs are notified of general USDA purchase information at least annually (7 CFR, 250.10(a)).

(3.5) Donate Don't Dump Product Allocations to ERAs

ERAs are offered DDD product as it is available and are provided amounts that can be used in a timely manner. Market style distributions are also made available. (See *Section 9: Receiving Donate/Don't Dump (DDD) Products for further information.*)

(3.6) California Department of Education (CDE) Commodity Allocations to TEFAP

Occasionally CDE has USDA commodities to transfer to TEFAP. The CDE may offer the commodities to TEFAP for various reasons including items being unusable in their program or items having an expiring shelf life. Once the commodities are transferred to CDSS, via approval from USDA, they become TEFAP product and are allocated to ERAs in the same manner as DDD. The commodities are offered as available with consideration of transportation issues as well as the amounts that can be used in a timely manner.

(3.7) USDA Priority System Requirements

Federal regulations contain a priority system in the allocation of USDA food to ERAs. In a Presidential declared emergency, food may be diverted to an Emergency Feeding Organization (EFO). An EFO is an ERA that provides food assistance to relieve situations of emergency and distress to needy persons. EFOs include food banks, food pantries, and soup kitchens.

(3.8) Food Bank Commodity Allocation to Distribution Sites

ERAs that have an MOU with CDSS may only distribute USDA commodities to subcontracted distribution sites that are EFOs, i.e., organizations such as food banks, food pantries, and soup kitchens that provide nutrition assistance to relieve situations of emergency and distress of needy persons.

ERAs are required to provide fair shares of commodities, by type and quantity of item received, to subcontracted distribution sites providing household commodities. ERAs must maintain records to demonstrate that over time there is equity in issuance of commodities among these sites. Each food bank, however, may determine the level of participation in congregate feeding programs based on their individual capabilities.

(3.9) Allocation to Avoid Waste

The USDA commodities must be requested and distributed by CDSS and by ERAs only in quantities that can be consumed without waste (7 CFR, 250.10(a)).

The CDSS must ensure that a food bank does not receive commodities in excess of anticipated use, based on inventory records and controls, or in excess of its ability to accept and store such commodities (7 CFR, 250.12(b)(c)).

(3.10) USDA Commodity Transfers

All transfers of USDA commodities between like ERAs (i.e., one county food bank to another) must have prior approval from CDSS and must be documented by using the FDU-002, Request for Commodity Transfer form. All transfers of USDA commodities between unlike ERAs (i.e., schools to charitable institutions) must have prior approval from USDA via CDSS and must be documented using the FDU-002 form (7 CFR, 250.14 (d)), (7 CFR, 251.4(g)). After obtaining CDSS approval for transfer of USDA commodities, ERAs must:

- Mutually agree to the method for physical movement of the commodity involved and the responsibility for any charges incurred;
- Notify their consultant to document the transfer activity in the Commodity Distribution Management System's (CDMS) inventory database under "Adjust;"
- Document movement of the commodity when it is distributed to eligible recipients.

Section 4 Eligibility Criteria for Eligible Recipient Agencies and Distribution Sites

(4.1) ERAs – Definition and Criteria

Pursuant to Federal regulation, an organization is eligible to receive USDA commodities for distribution if they meet the following criteria. The Eligible Recipient Agency (ERA):

- 1) is public, or
- 2) is private, possessing tax-exempt status pursuant to §251.5(a)(3), and
- 3) is not a penal institution, and
- 4) provides food assistance
 - (i) exclusively to needy persons for household consumption, pursuant to a means test established pursuant to §251.5(b), or
 - (ii) predominantly to needy persons in the form of prepared meals pursuant to §251.5(a) (2); and
- 5) has signed an agreement [MOU] with the designated state agency for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another ERA which has signed an agreement [MOU] with the state agency; and
- 6) falls into one of the following categories:
 - (i) emergency feeding organizations (food banks, food pantries, soup kitchens);
 - (ii) charitable institutions (hospitals, retirement homes);
 - (iii) summer camps for children or child nutrition programs providing food service; nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly); or disaster relief programs (7 CFR, 251.3(d)).

A food bank must have a CDSS approved inventory control and accountability system in place prior to handling USDA commodities, which must be maintained continuously at all points of commodity receipt and distribution.

The food bank must have a CDSS approved system to ensure that USDA commodities are distributed in accordance with Federal and state TEFAP laws, rules, regulations, policies, and procedures.

The CDSS shall consider the past performance of potential ERAs when approving applications for participation (7 CFR, 250.11(b)).

The CDSS may impose additional requirements for participation that are inconsistent with the provisions of Federal regulation (7 CFR, 250.2(b)).

Section 4 Eligibility Criteria for Eligible Recipient Agencies and Distribution Sites

(4.2) Tax Exempt Status

Private organizations participating in TEFAP must possess tax exempt status and 501(c)(3) documentation must be maintained on file.

Organizations that are organized and operated exclusively for religious purposes are automatically tax-exempt, per the Internal Revenue Code. USDA does not require these organizations to obtain tax-exempt status to be eligible as an ERA (7 CFR, 251.5(a)(3)(iii)).

Organizations that are not organized and operated exclusively for religious purposes are required to obtain tax-exempt status, 501(c)(3). Organizations that have applied for, but not yet obtained, tax-exempt status may participate in TEFAP for 180 days with a possible 90-day extension, if the organization can show good faith in its attempt to obtain tax-exempt status (7 CFR, 251.5(a)(3)(iv)).

Organizations can also demonstrate their nonprofit's tax status by confirming that the organization is listed on the IRS' Exempt Organization list, <https://www.irs.gov/charities-non-profits/exempt-organizations-select-check>.

(4.3) Distribution Sites

Distribution sites are also considered ERAs and must meet the same eligibility criteria contained in the definition of an ERA (7 CFR, 251.3(d)). Federal regulation allows CDSS to delegate to primary ERAs or food banks (those ERAs that have MOUs directly with CDSS) the authority to determine if organizations meet Federal and State criteria to receive commodities and administrative funds in order to become distribution sites. ERAs must ensure that their selected distribution sites/Sub-ERAs meet the established criteria as outlined above. ERAs, however, are not granted authority to establish eligibility criteria (7 CFR, 251.5(c)).

(5.1) Agreement between USDA and CDSS

In California, TEFAP administration is the responsibility of CDSS, which has:

- 1) been designated for such responsibility by the Governor; and
- 2) entered into an agreement with USDA for such administration.

The CDSS is designated as the state agency responsible for entering into contractual relationships for receiving, warehousing, and distributing USDA commodities (7 CFR, 251.2(b)).

(5.2) Agreements between CDSS and ERAs

The CDSS establishes agreements with public and private non-profit agencies or organizations to function as a distribution network for USDA commodities, DDD, and local TEFAP donations to program-eligible recipients. ERAs sign a formal MOU with CDSS that authorizes them to receive and distribute USDA commodities.

The CDSS must have a current MOU with a food bank in order for the food bank to receive USDA commodities and/or administrative funds. MOUs are considered permanent (with amendments) and may be terminated by either party with a 30-day notice (7 CFR, 251.2(c)(2)).

An MOU between CDSS and a food bank must include:

- A statement that the food bank agrees to operate in accordance with requirements of Title 7 CFR, Parts 250 and 251;
- The name and address of the food bank receiving commodities and/or administrative funds (7 CFR, 251.2(d)(1)(ii));
- Specific identification of each function for which the food bank is responsible when CDSS delegates responsibilities to the food bank that are normally the responsibility of CDSS, and a written requirement that food bank perform these functions in accordance with Title 7 CFR, Parts 250 and 251;
- Specific terms and conditions for the food bank to distribute food and/or administrative funds to a sub-distribution site, when CDSS allows them to do so, along with a list of specific organizations or types of organizations eligible to receive food or funds (7 CFR, 251.2(d)(2)(ii)).
- Assurance that the ERA agrees to comply with all requirements relating to food safety and food recalls. 250.4(c)(2)
- Civil Rights Assurance

The ERAs must provide, on a timely basis, by amendment to the MOU, any changed information, including, but not limited to: any changes resulting from amendments to Federal regulatory requirements and policy (7 CFR, 251.2). For example, an amendment to the MOU is required if a food bank has a change in items such as: name or physical location.

The CDSS must have written contracts with all storage facilities, food processors, carriers, and other entities that deal with USDA commodities (7 CFR, 250.12 (b)).

(5.3) Agreements between ERAs

The ERAs who have MOUs directly with CDSS are authorized to enter into agreements or contracts with other organizations to perform TEFAP functions. Organizations that operate under ERAs directly contracted with CDSS are also ERAs, but are more commonly known as sub-ERAs or distribution sites (DS). ERAs must have written agreements with their DS before a DS may receive USDA commodities (7 CFR, 251.2(c)(2)).

A food bank may elect to subcontract all or part of its TEFAP storage and distribution services.

An agreement between a food bank and DS must include:

- Language from The Emergency Food Assistance Program (TEFAP) USDA Commodity Food Agreement form, also known as the Site Agreement form
- A statement that the DS agrees to operate in accordance with requirements of Title 7 CFR, Parts 250 and 251;
- The name and address of the DS receiving commodities.
- Signature of the food bank representative and DS representative and date
- 30-day termination clause
- A statement that the DS agrees to the right of the food bank, USDA, and TEFAP to visit and inspect
- Civil Rights Clause

The ERAs that have MOUs directly with CDSS are responsible for ensuring that their subcontracted distribution sites meet all Federal and state program requirements. The food bank is not relieved of any program responsibility by subcontracting. Instead, the food bank becomes responsible for the actions of the sub-ERAs. At the same time, sub-ERAs are not relieved of the responsibility of contracted performance to the food bank.

(5.4) Transfer of Responsibility to a New Food Bank

The following procedures apply to any change or transfer of food bank responsibility:

- A request for transfer or termination of contractual obligation may originate with either party.
- The CDSS will review and approve or deny the change or transfer.
- For approved transfers of food bank responsibility, the first consideration will be the provision of continuity of service to recipients to the extent possible. Since MOUs are considered permanent with a 30-day notice, CDSS may request that the existing MOU remain in operation until an MOU with a new ERA is signed.
- In situations where CDSS deems it to be in the program's best interest, CDSS may provide a 30-day notice of MOU termination to the ERA or order an immediate termination of the MOU.
- Any new food bank must have a signed MOU with CDSS in order to receive USDA commodities (7 CFR, 251.2).
- The new food bank's starting inventory records must reflect an opening balance of zero. Quantities received by the new food bank on transfer of title must be approved by CDSS and have backup documentation to include verified physical tallies.
- The CDSS shall conduct a final accounting of inventory before an official transfer of commodities can take place.

(6.1) CDSS Responsibility

The CDSS has established uniform statewide criteria for determining the eligibility of households to receive commodities for home consumption. One person from each household may receive commodities if they meet criteria, which include:

- 1) Income-based standards and the methods by which households may demonstrate eligibility under these standards (7 CFR, 251.5(b)(2); and residency.

(6.2) ERA Responsibility

Organizations must only distribute commodities to households which meet the eligibility criteria established by CDSS (7 CFR, 251.5(a)(1)).

The CDSS must impose upon ERAs the responsibility for determining that recipients to whom ERAs distribute USDA commodities are eligible (7 CFR, 251.5(c)).

(6.3) Recipient Income-eligibility Criteria

In order for a recipient or household to be eligible for USDA commodities, their income must fall within the guidelines listed on the TEFAP Income Eligibility chart. The current TEFAP Income Eligibility chart is based on 150 percent of the Federal poverty income guideline, which is established according to the number of persons in the household. Homeless individuals are subject to the same income requirement.

Recipients are only required to self-certify that they are within the TEFAP income guidelines through their signature on the EFA-7 form. **Recipients may not be asked to supply proof of income.**

The following should not be considered part of a recipient's income:

- Student aid assistance received from a program funded by Title IV;
- Employer or union-paid non-cash benefits, such as health insurance, food, or rent received in lieu of wages, etc.;
- Value of non-cash benefit programs such as Medicare, Medicaid, Food Stamps, school lunches, housing assistance, etc.

Household eligibility may be determined on either monthly or annual income; it is not necessary to qualify on both. Eligibility may occur during any month that the recipient meets the TEFAP income guidelines. Eligibility may also occur based on annual income, even if the current month's earnings exceed the monthly income guideline.

(6.4) Recipient Residency Criteria

In order for a recipient or household to be eligible for USDA commodities, they must reside in the geographical area being served at the time of applying for assistance, regardless of length of residency (7 CFR, 251.5(b)(3)). Recipients may be asked for documentation of residency; however, it is not a requirement to receive food. The recipient may be asked to present acceptable evidence of residency in the service area, such as a Driver License. **However, if documented proof of residency cannot be supplied, food may not be denied to the recipient if they agree to sign the EFA-7.**

A recipient who lives in the county, but outside of the distribution area may receive commodities; however, the client should be advised of a site in their own area to pick up commodities from in the future.

(6.5) Picking up Commodities for Others

A distribution site may allow an alternate person to pick up commodities for an eligible recipient in their absence. The alternate must bring with them an Alternate Pick-up form signed by the eligible recipient to authorize the pick-up. ***(See the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures> for the Alternate Pick-up form.)***

The alternate must write the recipient's name, as well as his or her own name, on the EFA-7.

If an alternate does not bring the Alternate Pick-up form to the site, a note from the recipient authorizing the pick-up will suffice. The note must include the following:

- Date
- Statement authorizing the pick-up of commodities by the alternate
- Alternate's name
- Statement that the recipient is income eligible
- Recipient's signature, address, and household size

The distribution site must attach Alternate Pick-Up forms and notes to the EFA-7s to be maintained on file. Recipients are required to provide a new Alternate Pick-up form or note for each distribution, and limit of five (5) alternate pick-up forms may be presented at one time by one alternate chosen to pick up commodities.

(6.6) Congregate Feeding Agency Recipient Criteria

Congregate feeding sites providing prepared meals, must demonstrate to CDSS or the contracting food bank that they serve predominantly needy persons. The CDSS may require a higher standard than “predominantly” and may determine whether organizations meet the applicable standard by considering socioeconomic data of the area in which the organization is located or from which it draws its clientele (7 CFR, 251.5(a)(2)).

The congregate feeding sites may serve meals that contain USDA commodities to non-eligible people. This is allowable only when the non-eligible people share common preparation, serving, or dining facilities with eligible people. As long as the non-eligible people are common beneficiaries with the eligible people of the program or the non-eligible people are few in number compared to the eligible people and receive meals as an incidence of their service to the eligible people, such as, relief workers, teachers, etc. (7 CFR, 250.13(d)(1)).

(7.1) Frequency and Rate of Distribution

ERAs shall attempt to serve at a minimum 25 percent of their 60/40 target population monthly and may use their discretion in deciding the location and number of distributions necessary per month to avoid service gaps or overlaps. However, all distribution sites must distribute at **least once per month**, unless extenuating circumstances are present and prior, written approval from CDSS is obtained.

ERAs must meet the following criteria for distribution of USDA commodities:

- To the extent that is reasonably possible, income eligible recipients should have equal **access** to receiving the same amount of USDA commodities. Though each recipient may not actually **receive** the same amount of food due to visiting distribution sites at different times and/or days, ERAs must ensure that each recipient has equal **access** to the extent possible, to the same amount of food. (EFAP Policy Notice 00-01)
- The ERAs, whenever possible, should attempt to distribute USDA commodities in fair share proportions by household size. For example, a household of seven must receive the same amount of food as another household of seven, regardless of whether they are going to a distribution site that distributes USDA commodities to them more than once per month or one that distributes only once per month. This policy pertains to all distribution sites in the food bank's defined service area. (EFAP Policy Notice 00-01)

(7.2) Closed Distribution Sites

The TEFAP distribution sites must be open to the general (eligible) population. Sites that limit participation or attendance to only its members may not distribute USDA commodities. However, under certain circumstances, such as when health and safety issues are present, a closed distribution may be allowed to operate with prior written approval from CDSS. A food bank must request approval to operate a closed site from CDSS, and may not operate it until approved. (See *EFAP Policy Notice 05-01*)

The food bank must submit a written request to CDSS and include the following information:

- Name of the distribution site
- Population served
- Days/Hours of operation
- Why this site should be designated as a closed site
- Alternate distribution site location

(7.3) Site Distribution Procedures

The food bank must ensure that distribution site information is accurate and available to the public at all times. The distribution schedule must include the distribution site name, address, beginning and end times of the distribution, as well as a contact telephone number.

All distribution sites must distribute food according to the date and time communicated to recipients, and according to the distribution schedule. If a distribution site distributes all of its food before the advertised end time, a site representative **must remain** on site to inform recipients of their options. Site representatives may refer recipients to another distribution site or to the food bank for assistance. Distribution sites must then inform the food bank that additional food should be sent in the future to avoid running out.

The USDA commodities shall be distributed only to recipients who are eligible to receive them. Under no circumstances shall recipients be required to make any type of payment in money, materials, or services of any kind in connection with the receipt of USDA commodities; nor shall voluntary contributions be solicited in connection with the receipt as a condition of receiving USDA commodities for any purpose.

Distribution sites may not place donation cans anywhere on the premises during a USDA distribution.

(7.4) TEFAP Distribution in Conjunction with Other Programs

The USDA commodities may be distributed simultaneously with Brown Bag or other programs as long as:

- 1) The distribution site is open to the public and not limited to specific individuals, and
- 2) No money is being requested for the food. (Policy Notice 00-01)

If a distribution site has additional programs to offer to recipients, or wishes to collect demographic information from recipients, they must be offered USDA food first and given the choice to participate in the other services available or complete additional paperwork. It must be made clear that participation in other programs or supplying personal information is not a requirement to receive USDA food.

A few examples are:

- Post a sign, posted within sight of the EFA-7A sign in sheet, stating that TEFAP only recipients may bypass the intake process and only needs to sign the EFA-7 form
- Have a statement in (or attached to) their intake form stating that it only needs to be completed if they are interested in the available programs aside from TEFAP

(7.5) Required Documents at Distribution Sites

The following items must be posted at each distribution site in clear view of all TEFAP recipients:

- The Emergency Food Assistance Program (TEFAP) Certification of Eligibility (EFA-7)
- The TEFAP Income Guidelines must be posted next to the EFA-7 signature document.
- The “And Justice for All Poster”
- For religious organizations, “The Emergency Food Assistance Program (TEFAP) Written Notice of Beneficiary Rights”, must be posted.

The household recipient signing the “self-certification under perjury” statement attesting to household income being within the TEFAP guidelines may supply proof of eligibility.

All participants must sign the EFA-7 form. Recipients that are unable to write their name, may mark a letter “X” on the signature line. A distribution site volunteer must then initial his or her own name and print the recipient’s name next to the “X”.

All persons who are willing to sign the statement shall be deemed program eligible.

(7.6) The Emergency Food Assistance Program (TEFAP) Eligibility Certification (EFA-7) Form

The original EFA-7 form must be collected and maintained for 3 years plus the current year, either at the ERA or Sub-ERA. The EFA-7 contains the following information pertinent to each household receiving USDA commodities for household consumption (7 CFR, 251.10(a)(3)):

- The address and zip code of the household, to the extent possible. P.O. Box numbers are adequate for rural areas. If the recipient is homeless, the nearest cross-streets of the recipient’s most recent habitat, or indicate on the EFA-7 that the recipient is homeless.
- The number of persons in the household.
- The Yes and No column on the form may be used to provide unduplicated numbers of people and households served each month.
- There is one EFA-7 form available for use. All distribution sites must use the EFA-7 version dated 01/2018. (*See the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures> or contact your TEFAP Program Consultant for the EFA-7 form.*)

(7.7) Unrelated Activity

The TEFAP recipients must not be pressured or influenced to support any religious, social, or political point of view in association with the receipt of USDA commodities.

Unrelated activity may be conducted at distribution sites as long as:

- The person conducting the activity makes it clear that the activity is not part of TEFAP and is not endorsed by the USDA;
- Information not related to TEFAP is not placed in or printed on TEFAP distribution containers;
- The person conducting the activity makes it clear that cooperation is not a condition of receiving USDA commodities, (e.g., attending religious services, contributing money, signing petitions, or conversing with the people);
- The activity does not disrupt distribution of USDA commodities.

The ERA and distribution site personnel are responsible for ensuring that activities unrelated to the distribution of USDA commodities are conducted in a manner consistent with the above conditions (7 CFR, 251.10) (f)(1)(i)(ii)(iii)).

Federal, state, or local government program material may be deemed related to TEFAP if it is directed toward services for the needy.

(7.8) Civil Rights

In accordance with the Federal law and USDA policy (No. FD-113), there must be no discrimination in the distribution of USDA commodities under this part because of race, color, national origin, sex, age, or handicap (7 CFR, 251.10(c)).

The ERA must notify the public, including minority and grass roots organizations in their service area, of the availability of TEFAP distributions in their area and eligibility requirements for the program at least once a year.

Changes in the location of TEFAP distributions, times of service, or any significant program changes, as transmitted to the CDSS by the ERA, must be transmitted to the distribution sites and their recipients in a timely manner. This can be done through media advertising, public service announcements, or directly to individuals by the distribution sites and/or the ERA.

Likewise, any changes in the location of TEFAP distributions, times of service, or any significant program changes, **as initiated by the distribution site**, must be transmitted to the ERA, and recipients must be notified prior to the next distribution date.

All ERAs and Sub-ERAs must offer a mandatory annual civil rights training for staff delivering services and shall create a system for responding to client complaints based on perceived or actual discrimination.

The ERAs and Sub-ERAs have a responsibility to take reasonable steps to ensure meaningful access to their program information and services by persons with limited English proficiency (LEP).

These services may include:

- Providing interpreters
- Providing printed materials in different languages
- Bilingual staff should be provided as available or staff members could use printed materials with commonly used phrases. The DS should contact the Food Bank for additional guidance in these areas.

CDSS has provided a webinar and checklist for Civil rights training. The webinar link, checklists, certificate of completions, and policy notices are available at <http://www.cdss.ca.gov/inforesources/EFAP/Policies-and-Notices>

Program staff must complete the civil rights training by using the webinar. Front-line and non-front line staff have the option of using the webinar or using the checklists found on the above link. Civil Right training must be updated **once every calendar year** and proof of the training (completed certificate or sign in sheet must be maintained at the ERA or Sub-ERA for three years plus the current year of the training.

(7.9) Fair Hearing

In accordance with Title 7, Code of Federal Regulations (7 CFR), sections 247.15 and 247.17, and disbursed in PN 17-03, All ERAs must have an established fair hearing process. The TEFAP and CSFP Fair Hearing policy and procedures must include, at a minimum, the following provisions:

- Allow at least 60 days from the date the ERA mails or gives the individual the notification of ineligibility or discontinuance to request a fair hearing.
- Permit applicants or participants to request a fair hearing either verbally or in writing.
- Allow participants who appeal the discontinuance within the 15-day advance notification to continue to receive benefits until one of the following occurs:
 1. A decision is made on the appeal by the hearing official.
 2. The participant's certification period ends.
- Provide an individual with at least 10-days advance written notice of the time and place of the hearing, and include the rules of procedure for the hearing.
- Allow the applicant or participant the opportunity to:
 1. Examine documents that support the ERA/LA's decision before and during the hearing, as well as submit evidence to help establish facts and circumstances
 2. Be assisted or represented by an attorney or other persons
 3. Bring witnesses and present arguments

4. Question or refute testimony and evidence at the hearing
- The ERA/LA may deny a request for a fair hearing in the following scenarios:
 1. The hearing request is not received by the ERA/LA within 60 days from the date the ERA/LA mails or gives the applicant or participant the notification of adverse action.
 2. The request is withdrawn in writing by the individual requesting the hearing or by an authorized individual.
 3. The individual fails to appear, without good cause, for the scheduled hearing.

Fair Hearing – Process

The hearing must be conducted by an impartial official provided by the ERA who does not have any stake or personal involvement in the decision, and who was not directly involved in the initial adverse action that resulted in the hearing.

The hearing official is responsible for:

- Administering oaths or affirmations
- Ensuring that all relevant issues are considered
- Ensuring that all necessary evidence for a decision is present at the hearing and included in the record of the hearing
- Conducting the hearing in an orderly fashion and in accordance with due process
- Making a hearing decision

The hearing official must:

- Make a decision that complies with federal laws and regulations and is based on facts in the hearing record
- Write a decision that summarizes the facts of the case, specifies the reasons for the decision and identifies the evidence and the laws or regulations upholding the decision

Fair Hearing – Record Maintenance

In addition to the hearing decision, a transcript or recording of the testimony or an official report of all that transpired at the hearing, along with all exhibits, papers, and requests made, must be maintained by the ERA/LA and must be available for public inspection and copying, in accordance with 7 *CFR*, sections 247.29(a) and 247.36(b).

(8.1) USDA Commodity Shipments

The USDA commodities are shipped to ERAs by one of two methods:

- 1) direct-shipped from USDA, or
- 2) indirect-shipped through CEFL

The ERAs receive direct-shipped commodities from USDA if they order an entire truckload of commodities. ERAs that do not order entire truckloads receive indirect – shipped commodities from CEFL. The truckloads are direct-shipped from USDA to CEFL where they are divided, organized, and delivered to each ERA by CEFL. This process is referred to as breaking bulk.

(8.2) USDA Commodity Orders

Under the direction of CDSS, CEFL works with ERAs by email, fax, and/or telephone to place most commodity and bonus commodity orders.

CEFL sends each ERA an order packet from which to order their USDA commodities for the year. Because USDA has instituted long term contracts for some of the fruits and vegetables, order packets are sent for commodities for the entire contracting period. The packet includes instructions, a return due date and the estimated entitlement funds the ERA must spend on commodities for the year.

The order form consists of a menu or list of the USDA commodities available for purchase. The list includes the Material Description, Material ID Number, pack size and cost. On the order form ERAs must fill in the number of cases wanted in the “Amount Requested” column for each commodity they wish to order. In addition, ERAs must fill in the month they wish to have the commodity delivered in the “Ship Period Requested” column. Through this process, ERAs are given the opportunity to decide the type and quantity of commodities they would like to order; however, ERAs must spend their funds responsibly. ERAs must keep in mind nutrition necessity versus high cost items and spend their funds in a way that will best serve their population. It is recommended that when completing an order, the ERA keep a running total of the cost of the order to be sure they do not spend beyond their entitlement amount.

The ERAs must be sure to return their completed order to CEFL on or before the due date given. Failure to do so may result in an ERA not receiving what they desire and may be subject to receive items in stock at the time of delivery. In addition, orders for direct-ship ERAs are entered directly into the USDA ordering system which also has due dates. Direct-ship ERAs failing to submit their order on time to CEFL run the risk of not receiving their shipments due to missing the USDA due date as well.

In order to accommodate the USDA direct-ship process of shipping only full truckloads, an ERA's order may have to be adjusted or changed to a similar product. For example, when there are not enough orders to accommodate a full truckload of peas but there are enough to order a full truckload of corn, those that ordered peas are changed to corn. Once all orders are received by CEFL, California's order is placed into USDA's Web-Based Supply Chain Management (WBSCM) and ERA's will be notified of any changes made to their order. Due to the short deadlines placed by USDA, CEFL will make the final decision as to which commodities will be ordered.

An ERA may choose to allow CEFL to order for them on a continuing basis. For further information or to request that CEFL order for you, please contact CEFL directly.

When bonus commodities become available, CEFL will notify ERAs through e-mail, and/or telephone communication. An ERA will be given the opportunity to decide how much of each bonus commodity they are willing to accept.

If a USDA direct shipment must be diverted by the ERA to another location other than the one listed as the original destination point, the ERA is responsible for any resulting charges, including storage and diversion charges.

(8.3) USDA Distribution Schedules

The CDSS requires CEFL to provide reliable and equitable deliveries to ERAs, considering their local hours of operation, holidays and vacations, and, whenever possible, other special needs of ERAs (7 CFR, 250.13(a)(6)).

Distributions schedules of direct USDA shipments are sent to ERAs 30 days in advance of the first delivery of the quarter. Additional distribution schedules will be sent as orders are placed and confirmed with USDA. ERAs receiving their commodities from CEFL will be notified monthly of the commodities available for delivery.

The ERAs are notified of general USDA purchase information, anticipated delivery schedule with types and quantities (at least quarterly), and changes in delivery schedules (7 CFR, 250.13(a) (6) (ii)).

Commodities may be delivered to ERAs less frequently than monthly when monthly service is not cost effective due to distance, size of delivery, or situational reasons such as weather conditions (7 CFR, 250.13(a)(6)).

(8.4) USDA Delivery Notification

Depending on the type of shipment, USDA or CEFL must notify the ERA of pending deliveries at least 24 hours prior to delivery. The delivery time set will be a two-hour window to allow for any unforeseen delays. ERAs should make a concerted effort to off-load commodities as soon as the carrier arrives so that subsequent deliveries may be made as scheduled. (EFAP Policy Notice 00-03)

Delivery appointments are scheduled in order to make receiving commodities more efficient. ERAs are required to schedule delivery appointments, which gives them the opportunity to choose a time in which they will be prepared to, unload, check, and be fully accountable for the delivery.

(8.5) Delivery Charges

Direct shipments from USDA are provided via commercial carriers and freight is prepaid. ERAs must not pay any charges requested by the driver. ERAs must notify CDSS immediately if payment of any kind is requested. (EFAP Policy Notice 00-03)

An ERA is responsible for any accrued detention, redelivery, or diversion charges. Redelivery occurs when a driver has made a prior appointment to deliver USDA commodities and is asked by the ERA to reschedule the appointment after arriving at the ERA. Diversion charges occur when a driver is asked by the ERA to deliver the load to a destination other than the destination listed on the delivery order (DO). Diversions must also be approved in advance by CDSS.

Charges for redelivery or diversion may not be claimed as an TEFAP expense.

(8.6) Additional Charges

An ERA is responsible for all scheduled USDA deliveries and may not refuse shipments that have been previously ordered. In the event that an ERA no longer wants a USDA direct shipment, CEFL under the direction of CDSS, will attempt to find another food bank that is willing to accept the refused shipment. However, the ERA will be responsible for any diversion, or other charges, associated with the shipment. If another food bank is unwilling to accept the shipment, the ERA is responsible for any diversion and storage charges, re-delivery charges, commodity loss, and any other charges associated with the load. These charges must not be claimed as an TEFAP expense.

The CEFL along with the trucking company making the diversion, determine resulting charges.

If there is a commodity loss resulting from the refusal or diversion of USDA commodities, the ERA will be responsible for replacing the commodities in accordance with Section 13: Commodity Losses, Spoilage, and Out-of-Condition Food.

In the event of a dispute in payment for any charges resulting from the ERA's storage, receipt, or delivery of USDA commodities, CDSS has the authority to make the payment and deduct the amount from the ERA through the Request for Reimbursement of Expenses (RFR).

(8.7) Receipt Procedure

An ERA is responsible for the inventory of USDA commodities at the time the commodities arrive at the ERA's warehouse or alternate storage facility. The ERA must first carefully check the seal on the truck to ensure it has not been tampered with.

During the unloading of the commodities, the ERA must ensure:

- complete delivery is made, and
- it is in good condition, and
- any overage, shortage, or damage is properly reported.

During a delivery, one must:

- count the amount of the commodities in the delivery,
- check the condition and temperature of the truck and commodities, and
- note this information on the bill of lading.

When necessary, a Commodity Receipt Report – Problem Load (CRR) may need to be filled out. In the case of a problem load, immediately contact your CDSS Program Consultant and return the CRR. **Failure to do so may result in an ERA being held liable for out-of-condition commodities, even though the damage may have occurred during shipment.**

When the driver arrives with USDA commodities, and before the driver leaves, the ERA must:

- 1) Inspect each shipment carefully as soon as possible after placement for unloading to determine its count and condition.
- 2) Record the following items: trucking company name and truck trailer number; the condition and serial numbers of the seal(s) on the door(s) of the truck or trailer container; the location where the shipment was unloaded, and the temperature of a temperature-controlled truck or trailer.
- 3) Sign and date the bill of lading to acknowledge receipt of all items physically received. **Do not sign or initial the bill of lading before determining whether there is damage to and/or whether there is a shortage or overage of the delivery.** Any discrepancies must be noted on all available copies of the bill of lading before the delivery vehicle is released. Once the bill of lading is signed, the ERA is responsible for the USDA commodities. The ERA is considered responsible for the condition and number of commodities.

Once the shipment has been inspected and received, the ERA must send the BOL, either by email or fax, to CEFL to be receipted. All deliveries are to be receipted within 48 hours, the ERA must send the BOL within 24 hours of delivery. Documentation must include:

- An account of product that is rejected at the time of receipt
- The quantity received in good condition

Additional information regarding Receipting Shipments refer to the National Policy Memorandum FD-062.

(8.8) Receiving Location

The ERAs must immediately notify their CDSS Program Consultant of any change in receiving location prior to 45 days before the scheduled delivery. The CDSS Program Consultant will notify USDA of the change. Costs incurred because of ERA failure to make timely notification will be charged to the ERA. These costs may not be claimed as a TEFAP expense.

Receiving locations must be prepared to off-load at the appointment time, with the proper equipment and off-loading labor, within the allotted time frames.

(8.9) Storage at California Emergency Foodlink (CEFL)

Often storage space is available to ERAs for storage of commodities that they do not have the capacity to handle; however, arrangements must be made with CEFL prior to diverting shipments to be stored at CEFL. As owner of the storage facilities, CEFL maintains the right to impose rules, regulations, and fees associated with storing commodities in their warehouse.

(8.10) Unloading Palletized Loads

The ERAs are responsible for unloading palletized loads, even if they do not have the proper equipment to handle the pallets.

The USDA allows up to two (2) hours free time to unload full and split palletized loads from trucks.

(8.11) Unloading Slip-sheeted Loads

The ERAs should inquire at the time of delivery scheduling if any USDA direct shipments are slip-sheeted (non-palletized), rather than palletized. Dry cereal is often sent on slip-sheets. ERAs are responsible for providing the proper equipment and off-loading labor for handling slip-sheeted loads. (EFAP Policy Notice 00-03)

The driver is responsible for unloading slip-sheeted loads to the tailgate. However, if the driver and the ERA agree, the driver may palletize the load within the truck for removal by forklift to the warehouse.

The USDA allows up to six (6) hours free time to unload full and split slip-sheeted loads from trucks.

If an ERA requests or requires a driver to restack product onto pallets or perform any service in relation to unloading, the ERA should be aware that the driver will normally charge for the service. The ERA will be responsible for any restacking or unloading charges. (EFAP Policy Notice 00-03)

(8.12) Dunnage

Packing and materials used to protect commodities during shipping must be removed and disposed of by the ERA.

(8.13) Free-time

USDA may make exceptions for additional free time. Free-time allowance is computed from the time of arrival or time of scheduled unloading, whichever is later. Allowance for lunch is not normally allowed. In the event the carrier should allow less time than the free time established, USDA will pay the difference. Bills for such charges should be sent to CDSS. CDSS will forward the information to the Kansas City Commodity Office, who will review the bill and file the claim through the appropriate USDA office.

Charges for detention of trucks beyond the free time allowed that are due to the ERA taking extended time to unload a truck beyond the free time allowed will be charged to the ERA.

If a shipment is unable to be unloaded or delivered, the truck driver has the right and obligation to protect the product by placing it in storage, if necessary. The time allowed to do so is at the driver's option, but it is generally only done as a last resort. As with making appointments, tariff rules set out the amount of time a carrier will allow to elapse before exercising this option. If the carrier has no tariff rules established to cover its inability to deliver, reasonable periods govern.

(8.14) Detention Records

In the case where a truck is detained either due to the driver or due to the ERA, the following records must be maintained by the ERA:

- Commodity identification;
- Delivery order number, contract number, or notice of delivery number;
- Name of truck driver;
- Truck, trailer number, or license plate number;
- Date and time unloading began;
- Date and time unloading was completed;
- Date and time vehicle was released for departure by the ERA;
- Total gross weight of freight unloaded;
- Date and time agreed upon for arrival of the truck if delivery was made under a prearranged schedule.

(8.15) Damaged Shipments

When a shipment is delivered where all or a portion of it appears to be off-grade, out-of-condition, or damaged, the ERA must do the following:

- 1) Call CDSS **BEFORE** accepting the shipment to report the facts of the condition of the shipment and to receive disposal instructions from CDSS.
- 2) If directed by CDSS, obtain an inspection by a qualified person.
- 3) If the findings of the inspection confirm those of the initial examination, hold the shipment and report the full details immediately to CDSS by telephone.
- 4) Complete a CRR with the following information:
 - Delivery order number, contract number, and notice of delivery number;
 - Railcar number and initial, piggyback trailer number, or truck/trailer identification;
 - Name of shipper, origin, and date of shipment;
 - Quantity and description of food in the shipment;
 - Date and time shipment received;
 - Specifically, the problem and the quantity affected;
 - Status (unloaded, trailer left warehouse, etc.);
 - Cause of condition, only if the cause is obvious (i.e., damaged container, fire, temperature unit not operating, etc.);
 - Protective services provided;
 - Name, title, and phone number of person who made the inspection. Note if inspection report was prepared. If so, forward a copy of report with CRR;
 - Name and location of carrier's agent who was notified along with the agent's response, including the time and date, and name of person making the notification;
 - Specific location within the transportation conveyance;
 - Person and phone number to contact regarding shipment.
- 5) Immediately email or fax the CRR to CDSS and await instructions for disposal and the possible replacement of the load.
- 6) Note on bill of lading a brief description of the problem, referencing the CRR for full documentation.

(8.16) Short or Over Shipments

When a shipment is delivered where it is determined that there is a shortage or overage, the ERA must do the following:

1. Contact your CDSS Program Consultant immediately.
2. Record on the bill of lading the exact amount of the commodity shortage or overage.
3. Complete a CRR with the following information:
 - Delivery order number, contract number, and Notice of Delivery number;
 - Truck/trailer identification;
 - Name of shipper, origin, and date of shipment;
 - Quantity and description of food in the shipment;
 - Date and time shipment received;
 - Specifically, the problem and the quantity affected;
 - Status (unloaded, trailer left warehouse, etc.);
 - Cause of condition, only if the cause is obvious (i.e., damaged container, fire, temperature unit not operating, etc.);
 - Protective services provided;
 - Name, title, and phone number of person who made the inspection. Note if inspection report was prepared. If so, forward a copy of report with CRR;
 - Name and location of carrier's agent who was notified along with the agent's response, including the time and date, and name of person making the notification;
 - Specific location within the transportation conveyance;
 - Person and phone number to contact regarding shipment.
4. Email CRR – Problem Load immediately to CDSS to await instructions for rectification and/or possible replacement.

The ERAs claiming an overage, shortage, or damage in a shipment are required to send a CRR to CDSS. Since damage or shortage cannot be determined from outside the carrier, unloading documentation and seal records must be maintained by all stop-off ERAs at all times. This documentation is required to support a claim for loss.

(8.17) Replacement

The USDA may replace USDA commodities received by ERAs when CDSS documents that the commodities were stale, spoiled, out-of-condition, or not in compliance with USDA specifications at the time USDA delivered them. The loss must be reported to USDA within three months (six months for canned commodities) of receipt of the product in the state. A signed consignee receipt or acceptable written documentation of delivery must be submitted to USDA. USDA may request that the product be re-inspected and determined to be stale, spoiled, out-of-condition, or not in compliance with USDA specifications. ERAs must submit the information listed above to CDSS, and CDSS will promptly submit the information to USDA (7 CFR, 250.13(g)(2)).

Replacement of commodities may be with food, cash payment, or replacement of entitlement funds. Food replacement will be on a per-pound or per-case basis. Cash payments may only be made with approval of USDA and must be used to purchase same or similar commodities as those being replaced. Cash payments will be based on the value of the commodities at the time the product was delivered or the cost to USDA for replacement, whichever is higher (7 CFR, 250.11(c)).

(8.18) Split Shipments

A split shipment is a single truckload with more than one delivery destination scheduled. If a split shipment is made in a temperature-controlled car, the stop-off ERA(s) must make sure that the refrigeration remains turned on during unloading and is on before the truck proceeds to the next destination. **Temperature at time of arrival and time of departure must be recorded. The stop-off ERA is responsible for resealing the truck.** ERAs must place and record seals on the outbound shipment from the stop-off point.

When shortages in split shipments are reported at a final destination only, the stop-off ERA must provide CDSS with proof of the following information before the truck leaves their facility:

- Quantity – unloading documentation or a statement supporting the unloaded quantity reported;
- Seals – complete inbound and outbound seal numbers;
- Location – where unloading was performed;
- Protection and supervision – protection and supervision given to the carrier during unloading.

(9.1) History of Donate/Don't Dump (DDD)

The statewide DDD program was created in 1995 through a Governor's Proclamation by Governor Pete Wilson to be administered by CDSS, in partnership with CEFL and the California Department of Food and Agriculture. DDD was created to rescue perishable fruits, vegetables, and various other products that would otherwise be disposed of by growers, packers, and retailers, and distribute them free of charge to TEFAP agencies throughout California to feed the hungry. DDD is highly beneficial to ERAs who do not have fresh fruits and vegetables available for local solicitation in their counties. DDD product is privately donated to TEFAP and treated the same as USDA commodities for purposes of handling and reporting.

(9.2) DDD Delivery Acceptance

Before delivery of DDD product, CEFL will contact an ERA by telephone to inform them of the type and quantity of product available. CEFL will ask if the ERA would like to receive the DDD product and **the ERA may accept or decline the product**. ERAs are strongly encouraged to accept all DDD product offerings in the interest of better serving their recipient population, since the value of fresh produce is well established. Before declining DDD product, the ERA should ensure that the needs of their recipients have been met through USDA allocations and local solicitation efforts.

(9.3) DDD Quality Grading

All DDD products are graded by CDSS using three categories: market quality, shelf life, and pack size. The following is a breakdown of the grading categories:

Market Quality:

- **Marketable** – First-quality product that would be marketable if sold.
- **Second** – Quality product that is perfectly edible but is not marketable.
- **Non-Marketable** - Salvage product that may need considerable reclamation before distribution. This includes non-nutritious food products and personal care products. Grade C products may neither be considered USDA or DDD products because they may be snack foods, personal care products, or products that are stale, dated, or need to be distributed immediately.

Shelf Life:

- **15 to 30 plus days** – Product has a storage life of at least fifteen days under appropriate storage conditions.
- **7 to 15 days** – Product must be distributed to eligible TEFAP recipients by 7 to 15 days.
- **4 to 7 days** – Product must be distributed to eligible TEFAP recipients by 4 to 7 days.
- **Use within 3 days** – Product must be distributed to eligible TEFAP recipients by 3 days.

Pack Size:

The DDD may arrive in three different pack sizes and most are on pallets. Pack sizes are as follows:

- 1) Unit, case, or carton
- 2) Bin or crate
- 3) Pallet

(9.4) DDD Reimbursement of Costs

The ERAs may claim costs associated with the storage, distribution, and handling of DDD product distributed to TEFAP recipients on the quarterly reimbursement claim.

(9.5) Market Style Distributions

CEFL may assist ERAs and distribution sites with a market style distribution by bringing the product directly to the recipients. CEFL delivers the DDD product to the site requested and may supply a few staff to assist with setup and distribution of the product. This can be done as a stand-alone distribution or in conjunction with a USDA commodity distribution. Contact your CDSS Program Consultant if you are interested in determining feasibility of a distribution in your area.

(10.1) Local Donations

The ERAs are encouraged to solicit local donations to supplement commodities provided by USDA and DDD. ERAs will have priority of obtaining products that are donated by growers, packers, and retailers in the ERA's local jurisdiction before the products will be accepted by CEFL for the DDD program. When CEFL receives a call from a potential donor, CEFL will call the local food bank in the donor's area to inquire if and how much product the food bank would like to receive.

(10.2) Receipt and Distribution Procedure

Local donations may be distributed with USDA commodities or in conjunction with other programs (7 CFR, 251.4(i)). However, all guidelines and procedures outlined for the distribution of USDA commodities must be followed in the distribution of these products. *(See Section 7: Distribution Guidelines and Procedures for further information.)*

(10.3) Receiving Financial Donations for Local Food Donations

If an ERA charges fees or accepts cash donations for local food donations received, the ERA must keep the USDA and DDD program food separate during the distribution. Cash donations cannot be accepted for any USDA or DDD program food (7 CFR, 250.15(a)(3)).

(10.4) Receiving USDA Commodities as Donations

The USDA commodities are sometimes returned as donations from individual recipients and other agencies. When USDA commodities are returned as donations a fee cannot be charged for the re-donated commodities. If practical, the ERA should mark out the USDA markings with a felt tip pen and maintain the name of the product. Once this is done the ERA may use the product the same as any other product received as a donation.

(11.1) Federal Regulatory Storage Requirements

The ERAs and distribution sites must provide facilities for the handling, storage, and distribution of USDA commodities which (7 CFR, 250.12):

- Are sanitary and free from rodent, bird, insect and other animal infestation;
- Safeguard against theft, spoilage and other loss;
- Maintain foods at proper storage temperatures;
- Stock and space foods in a manner so that USDA commodities are readily identified;
- Store USDA commodities off the floor and away from walls in a manner to allow for adequate ventilation;
- Take other protective measures as necessary

The CDSS and ERAs must ensure that storage facilities have current health inspections and approvals as required by Federal, state, and local regulations. ERAs should check within their county for required inspections and approvals (7 CFR, 250.12(f)(2)). ERAs may be asked to provide health inspection and/or pest control certificates/reports during CDSS Compliance Reviews.

(11.2) Specific Storage Requirements

The ERAs must adhere to the following storage requirements, as specified by CDSS per California's Health and Safety Codes:

- All food must be stored, transported, and served so as to be pure, free from contamination, adulteration and spoilage, and protected from vermin;
- Food facilities must at all times be so constructed, equipped, maintained, and operated as to prevent the entrance of vermin, rodents, insects, etc.;
- Food facilities must be kept clean and free of litter, rubbish, contaminants, pollutants, etc.

Additionally:

- Food must be stored under climate-controlled conditions in accordance with guidelines printed and distributed by CDSS (*See the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures> or your consultant for the Best if Used by Guide*);
- *If there are USDA commodities in the refrigerator/freezer, a log must be kept for the days the ERA is open.*
- Food must be placed away from walls, dividers, or other barriers to permit proper air flow around stacks of cases, bags, sacks, or other containers. Additional spacing may be allowed to provide access to product;
- When not palletized, food must be stored off the floor on shelves, racks, or 2" X 4"s;

- All food products must be stored away from non-food items that may contaminate food, such as cleaning products, insecticides, rat poison, etc.;
- The ERAs must have proactive pest control procedures;
- The ERAs must implement a system of stock rotation that assures the oldest stock is issued to recipients before more recent stock is issued. This is referred to as first-in-first-out (FIFO). Additional information on warehousing and storage is located on the internet at www.fns.usda.gov.
- The ERAs must implement an inventory procedure to check physical count and condition for all movement of USDA commodities in and out of storage locations on a monthly basis.

(11.3) Storage Facilities Reviews

The ERAs must conduct at least one review of its storage facilities annually. In the annual review of storage facilities, the ERAs must:

- Include a physical inventory, which must be reconciled with the storage facility's inventory records and maintained on file with the contracting agency or ERA;
- Identify and report to CDSS food items that are lost, stolen, or out-of-condition;
- Report to CDSS potential excessive inventory;
- Maintain proof of insurance to cover the fair market value of the stored USDA commodity items (7 CFR, 250.12(d));
- Maintain documentation at CDSS or local agency to reflect compliance with Federal and CDSS rules and regulations, including documentation of corrective action in the case of non-compliance. Corrective action should be taken immediately, with result of the corrective action forwarded to CDSS (7 CFR, 250.19).

(11.4) Commercial Storage Facilities Contracts

Contracts for commercial storage facilities shall be effective for no longer than five years, including option years to extend the contract. Before exercising option years after the fifth year, the storage facility must update all pertinent information and demonstrate that all USDA commodities received during the previous contract period has been accounted for (7 CFR, 250.12(f)).

Contracts with storage facilities must contain, at a minimum:

- Assurance that the storage facility will be maintained in accordance with the specifications of (12.1) *Federal Regulatory Storage Requirements* and (12.2) *Specific Storage Requirements* above
- Evidence that USDA commodities will be clearly identified;
- Assurance that an inventory system shall be maintained, and an annual physical inventory will be conducted and reconciled with the inventory records;
- Beginning and ending dates of contract;

- A provision for immediate termination of contract due to non-compliance on the part of the warehouse management;
- A provision for termination of contract for cause by either party upon 30-day written notice;
- Proof of insurance to cover the fair market value of the stored USDA commodity items;
- Express written consent for inspection of facilities, records, and inventory by CDSS, ERA, or USDA staff.

(12.1) Records

The ERAs and their sub-distributing agencies must maintain accurate and complete records to document the receipt, distribution, disposal, and inventory of commodities received (7 CFR, 250.19 and 251.10(a)(1)).

(12.2) Review of Storage Facilities

The ERAs and their sub-distributing agencies must review their USDA commodity storage facilities, including contracted commercial storage, at least annually. Annual reviews must include a physical inventory, which must be reconciled with the book inventory (7 CFR, 250.12(b)).

(12.3) Physical Inventory

The physical movement (receipt and distribution) of commodities at ERA and their sub-distributing agency location sites must be accurately documented. ERA inventory record figures and the CDMS inventory database “Ending Balance” figures must be fully supported by documents to account for inventory movement. Physical inventory figures are to be compared to the corresponding CDMS inventory database “Ending Balance” figures and any differences reconciled. Out of condition commodities must be also identified during the physical inventory process (7 CFR, 250.12(b)).

Corrective action must be immediately initiated if there are any deficiencies and a corrective action report sent to CDSS (7 CFR, 250.12(b)). Corrective action reports must include:

- Each commodity's Federal commodity code number and description;
- Each commodity's physical inventory variance from the book balance;
- Inventory reconciliation procedures utilized;
- How/why the difference(s)/out-of-condition occurred;
- Corrective actions taken to prevent a reoccurrence.

(12.4) Inventory Shortages and Replacements

Please refer to Section 13: Commodity Losses, Spoilage, and Out-of-Condition Food

(12.5) Excessive Inventory

In no case, may the inventory level of any one commodity in storage exceed a six-month supply unless the ERA submits justification and obtains CDSS and USDA approval (7 CFR, 250.12(c)(1)).

The CDSS shall determine if the ERA's inventory is excessive based on the rate of distribution, anticipated distribution, and other considerations (7 CFR, 250.12(c)(1)).

An inventory could be considered excessive whenever the total commodities on-hand exceed the following supply level:

- **Food Bank** – four (4) months

- **Distribution Site** – two (2) weeks (distributing weekly)
 - one (1) month (distributing less than weekly but more than one (1) time per month)
 - two (2) months (distributing only one (1) time per month).

The CDSS may make allowances under special circumstances (e.g., weather conditions or remote location) for inventory on hand exceeding the above levels.

The CDSS shall take corrective action to ensure that excess inventory at all levels are eliminated, unless otherwise authorized, and shall document actions taken.

(13.1) Theft or Vandalism

The ERAs must provide facilities for USDA commodities that are safe against theft and other loss (7 CFR, 250.12(a)). To prevent loss due to theft or vandalism, it is important that storage areas be secured.

The ERAs must implement procedures and controls to meet security needs according to the accessibility and design of the storage facilities. Control procedures must be open and visible to the public and staff.

Upon discovery of a theft or loss due to vandalism or another criminal act, the ERA must:

- 1) Immediately file a police report;
- 2) Notify CDSS by telephone for specific instructions;
- 3) Complete a Commodity Loss Report (CLR), FDU-001, including the following information:
 - Type and quantity of product;
 - Insurance coverage, including the claim potential;
 - Circumstances regarding security at the time of the incident;
 - A copy of the police report;
 - Current security status, repairs, and/or action taken;
 - Any other information necessary in making a claim determination.
- 4) Email or fax the CLR to your CDSS Program Consultant immediately after loss.

(See the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures>.)

(13.2) Spoiled or Out-of-Condition Food

If USDA food goes out-of-condition for any reason, the ERA must:

- 1) Set the product aside to isolate it from other product;
- 2) Notify CDSS by phone as soon as the discovery is made;
- 3) Complete a CLR (FDU-001) form if the loss is over \$500, including the following information:
 - Type and quantity of product involved;
 - Package date and any identification numbers of affected cases;
 - Date received at ERA or other receiving location;
 - Date product condition was detected;
 - Name of person who made the discovery;
 - Frequency of inventory or product checks by warehouse personnel;
 - Temperature of storage location and corrective action taken to prevent further occurrence;
 - Any other information that is pertinent to description of loss.

- 4) Email or fax the CLR to your CDSS Program Consultant immediately upon discovery of the loss. Do not dispose of out-of-condition food until instructed to do so. USDA food must not be disposed of without approval of the USDA (7 CFR, 250.13(f)(4)).

(13.3) Replacement by USDA

The USDA may replace commodities received by CDSS or by ERAs when CDSS documents that, the commodities were stale, spoiled, out-of-condition, or not in compliance with USDA specifications at the time USDA (7 CFR, 250.11(c)) delivered them. The conditions for replacement are:

- The loss must be reported to USDA within three months of receipt of the product in the state. For canned commodities, the loss must be reported within six months;
- A signed consignee receipt or acceptable written documentation of delivery must be submitted to USDA;
- At the request of USDA, the product must be re-inspected and determined to be stale, spoiled, out-of-condition, or not in compliance with USDA specifications;
- ERAs must submit the information listed above to the state who will in turn promptly submit the information to USDA.

Replacement of commodities may be either with food or cash payment. Food replacement will be on a per-pound or per case basis. Cash payments may only be made with approval of USDA and must be used to purchase same or similar commodities as those being replaced. Cash payments will be based on the value of the commodities at the time the product was delivered or the cost to USDA for replacement, whichever is higher (7 CFR, 250.11(c)(1)).

(13.4) Liability

Upon receiving information of a commodity loss by an ERA, CDSS must take immediate action to determine if, in fact, a loss did occur, who the responsible party is, the circumstance surrounding the loss, and the value of commodities involved with the loss.

In the event, it is determined a loss has occurred, the value of the loss determines whether CDSS or USDA determine the liability.

If the value of the commodities is less than \$500, the FDU-002 does not need to be completed. If the loss is between \$500.00 and \$100,000.00, CDSS may determine the liability.

If the loss is greater than \$100,000.00 USDA must determine liability and all documentation is forwarded to them.

(13.5) Replacement by ERA

If it is determined that the ERA is responsible for the loss of USDA commodities due to improper storage, improper distribution, use or neglect, the ERA will be responsible for full replacement of the USDA commodities. Replacement may be fulfilled with either food of similar type and quality, or cash payment to TEFAP. The decision of how commodities are to be replaced will be determined by either CDSS or USDA.

(14.1) Disposal Authorization

The USDA commodities must not be sold, exchanged, or disposed of without approval of USDA. Therefore, ERAs may not dispose of **ANY** USDA commodities at their own discretion if the value is over \$100.00. ERAs must get written authorization from CDSS to dispose of the USDA commodities.

To obtain authorization to dispose of product that is out-of-condition, the ERA must:

- 1) Set aside or appropriately isolate the out-of-condition product from other products. ERAs must exercise special care in isolating infested or contaminated food away from other product. Affected product must not be accessible to the public;
- 2) Contact the CDSS Program Consultant for further instructions. Certification from a local public health official or a USDA inspector may be required prior to disposal;
- 3) Complete FDU-001 Commodity Loss Report (CLR). Any product to be disposed of is by definition also considered a commodity loss;
- 4) Email or fax the CLR (if applicable) to your CDSS Program Consultant.

(14.2) Disposal Procedures

In order to dispose of the product according to Federal regulations, the ERA must either:

- 1) Render the affected product unfit for human consumption by mixing it with dirt and burying it in a landfill;
- 2) Place the affected product in a locked trash receptacle inaccessible to the public;
- 3) Donate the affected product to be used as livestock feed;
- 4) Transfer the affected product to a vendor specified by CDSS or USDA. If a vendor can reprocess the product, CDSS or USDA may approve the transfer. Any money resulting from the transfer of product will be retained by CDSS.

If the product will not be donated as livestock feed or transferred to a vendor, the ERA must ensure that affected product is properly disposed of and does not find its way to the public through scavengers. If affected food does find its way to the public and proper procedures have not been followed, the ERA may be held liable. Therefore, the affected product must always be secure including while it is awaiting disposal authorization and procedures.

The ERA must outline on the FDU-001 the method that will be used to dispose of the product. The CDSS representative will authorize disposal of the product and approve the method of disposal on the FDU-001 form.

(14.3) Disposal Records

The ERAs must maintain records for three (3) years plus the current year to document the receipt, disposal, and inventory of commodities received (7 CFR, 250.12(b) and 251.10(a)(1)).

The CDSS must require all ERAs to maintain accurate and complete records with respect to the receipt, distribution/disposal, and inventory of commodities, including products processed from commodities, and with respect to any funds that arise from the operation of the distribution program, including refunds made to ERAs by processors. All entities that contract with ERAs must also maintain such records (7 CFR, 250.19).

Therefore, per Federal regulation, ERAs are required to produce a written record of each authorized disposal. The ERA must complete a CLR and submit one copy to CDSS for back-up documentation to the inventory report. The ERA must retain one copy for inventory audit purposes. CDSS will forward a copy of the CLR to USDA. The CLR must include:

- Product type and number of cases or units;
- Date of disposal;
- Certification of how the product was disposed to ensure that it was rendered unfit or inaccessible for human consumption. The CLR contains four options for disposal. If none of the options apply, the ERA must supply a certification of disposal statement outlining the details of disposal;
- Signature of the ERA representative with telephone number;
- Authorizing signature of CDSS representative for disposal of product and method of disposal.

The ERAs must also notify their consultant to record disposed product in the CDMS inventory database as “adjusted out” transactions.

(See the internet at <http://www.cdss.ca.gov/inforesources/EFAP> or contact your TEFAP Program Consultant for the CLR forms.)

(14.4) Claim Determination

If the unusable condition of the product is determined to have been caused by negligence on the part of USDA, a claim may be filed to recover the fair market value of the loss incurred. The dollar amount may be reduced by CDSS to reflect any proceeds or amount recovered by the sale of the product by the ERA for animal feed or re-processing.

In lieu of cash, a claim by the ERA may be satisfied by in-kind replacement wherein USDA would provide replacement foods of comparable quantity, quality, and/or value for distribution to program-eligible recipients (7 CFR, 250.11(c)). However, in-kind replacement must be pre-authorized by CDSS and is subject to USDA approval.

(15.1) Records

The ERAs and their sub-ERAs must maintain accurate and complete records to document the receipt, distribution, disposal, and inventory of commodities received (7 CFR, 250.12(b) and 251.10(a)(1)).

The ERAs must maintain CDSS required financial records documenting all TEFAP related administrative expenses for 3 years plus the current year.

Distribution sites must complete accurate EFA-7 sign-in forms and maintain these on-site to validate the distribution of USDA commodities (7 CFR, 251.10(a)(3)). An ERA may maintain the EFA-7 sign-in forms on behalf of their distribution sites.

(15.2) Reports**Inventory Report**

ERAs must report the receipt and distribution of USDA commodities on a monthly basis. This report is due by the last day of the month following the month being reported.

Household Participation (HHP) and Congregate Feeding Participation (CFP) Report

ERAs must report participation figures on a monthly-basis. This report is due by the last day of the month following the month being reported. The CDSS Program Consultant will contact the ERA on the 5th following the due date if the report has not been submitted and locked.

Once data has been entered into CDMS, the report must be “locked.” A report will not be considered as being filed until the ERA has “locked” the report.

(15.3) Late Reports

Failure to file accurate timely reports may result in an ERA’s quarterly reimbursement claim payment reduction. *(See Section 17.4 for further information.)*

(15.4) Recording Participation Numbers

The household participation numbers on HHP reports must reflect unduplicated numbers including those for distribution sites conducting more than one distribution in a month (e.g., if a distribution site conducts weekly distributions and a family receives USDA commodities more than once in the month the HHP report shall reflect a count of that family and its size only once). On the EFA-7 form, the participations numbers being reported are only those that have circled “yes.”

The participation numbers on CFP reports must separately reflect the number of people and meals served. CFPs that allow recipients to eat more than one meal during a

distribution must ensure they are reporting accurately (e.g., if one recipient eats a meal and then has seconds, the CFP should report 1 person, 2 meals).

(15.5) Record Retention

All records must be kept for three years from the close of the ERA's or distribution site's fiscal year. Records may be required to be kept longer in the case of an ongoing audit or investigation (7 CFR, 251.10). CDSS may take physical possession of such records on behalf of their ERAs (7 CFR, 251.10(a)(4)).

Records must be reasonably accessible at all times for use during management evaluation reviews, audits, or investigations (7 CFR, 251.10).

(16.1) USDA Compliance Reviews/Audits

The USDA may conduct compliance reviews/audits of state agencies, ERAs, ERA sub-distributing agencies, and distribution sites at random (7 CFR, 250.20(a)). Frequently, these reviews/audits are unannounced.

The USDA compliance reviews/audits may include:

- Inspection and the inventory of stored USDA commodities;
- Inspection of USDA commodity storage facilities;
- Inspection and audit of records, including financial records, and reports pertaining to the receipt, storage and distribution of USDA commodities;
- Review of procedures and methodologies utilized in carrying out TEFAP program requirements.

(16.2) CDSS Compliance Reviews

The CDSS will conduct a compliance review of each ERA at least once every four years (7 CFR, 251.10(e)(2)). CDSS compliance reviews are an on-going process and as such may be conducted of an ERA, sub-ERA, and/or a distribution site more than once a year. These compliance reviews may be unannounced.

The CDSS compliance reviews will include:

- Eligibility determinations, including a review of ERA procedures and controls to ensure that distribution sites are complying with TEFAP program requirements;
- Food ordering procedures and practices;
- Storage and warehousing practices, including inspection of off-site and/or commercial storage facilities for, pest control, health and safety requirements, and storage and handling procedures;
- Inventory control determinations, including a review of perpetual inventory records, issuance and return procedures and records, physical inventory procedures, inventory reconciliation procedures, and a physical inventory count;
- Evaluation of distribution practices and inventory levels;
- Evaluation/review of agency agreements;
- Evaluation/review of EFA-7 sign-in forms;
- Evaluation of correlation between reports, population served, food ordered and distributed;
- Review of distribution site locations to evaluate proper and equitable selection of sites to meet population needs;
- Compliance of reporting and record keeping requirements, including a review of accounting records and documentation that support submitted reimbursement claims;

- Evaluation of civil rights practices and non-discrimination procedures (7 CFR, 251.10(c));
- Evaluation of the degree to which the ERA and distribution sites are serving the eligible population within their designated service area(s) – population served vs. target population;
- Evaluation of program outreach efforts, including advertising, and notification methodologies to ensure eligible recipients are advised of distribution times and locations;
- Assessment of compliance of inventory activity, household participation (HHP), and congregate feeding (CFP) data collection and reporting.

The CDSS will submit a compliance review report to an ERA within 30 days from the completion of the compliance review detailing any observed deficiencies and citing corrective action requirements (7 CFR, 251.10(e)(5)).

(16.3) ERA Compliance Reviews

The ERAs are required to conduct compliance reviews of half of their sub-distributing agencies and distribution sites each year and all within a two-year period. The sub-ERAs and distribution sites must demonstrate compliance with Federal and state regulations and requirements.

The ERA compliance review must include all applicable items listed in the TEFAP Distribution Site – Compliance Review Form. (See *Distribution Site – Compliance Review form on the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures>*).

(16.4) Corrective Action Plans

CDSS Compliance Review

An ERA must submit a corrective action plan to CDSS for approval within 30 days of receiving a compliance review report if deficiencies are cited in the review that require correction. CDSS will issue instructions related to the proposed plan and/or monitor implementation of the plan.

ERA Compliance Review

An ERA sub-distributing agencies and distribution sites must submit a corrective action plan to the ERA within 30 days of an ERA compliance review if deficiencies are cited in the review that pertain to TEFAP and require correction. The ERA is to forward a copy of the approved corrective action plan to CDSS.

(16.5) ERA Accountability

The ERAs are accountable to CDSS and USDA for adherence and compliance with all rules, regulations, policies, and procedures as set forth by CDSS and USDA. When not specifically addressed by CDSS or USDA, ERAs should follow generally accepted, industry-wide practices for recordkeeping, storage, warehousing, inventory, and other responsibilities of the ERA.

The ERA subcontractors, sub-distribution agencies, and distribution sites are equally accountable to CDSS and USDA for compliance and adherence to all rules, regulations, policies, and procedures as set forth by CDSS and USDA.

(16.6) OMB Circular A-133 – Audit Requirements

The ERAs, sub-distributing agencies, and distribution agencies/sites that receive a total of \$750,000 or more annually in Federal funds, either directly and/or as pass-through, must submit to CDSS an A-133 audit report, including all addendums, attachments, and management reports (7CFR, 250.20(a)). Included in the \$750,000 total are grants, monies, and the value of USDA commodities for all programs of the agency.

The A-133 audit and all accompanying addendums, attachments, and management reports are to be submitted to CDSS within nine months from the close of the fiscal year or within sixty days from the receipt of these items from the preparer, whichever timeframe is shorter.

The CDSS will send a corrective action request letter to an ERA and any affected sub-distribution agency or distribution site if the CDSS A-133 audit review discloses any EFAP deficiencies. The letter will be sent within 30 days of receipt of the A-133 audit. The affected agency is to respond to the CDSS corrective response letter within 30 days of receipt of the letter.

(17.1) Reimbursement for Expenses

The ERAs are eligible to receive reimbursement for expenses directly related to their administration of TEFAP in their service area. ERAs must include all program costs in their claims for reimbursement, even if they exceed their tentative reimbursement.

(17.2) Claiming Timelines

The USDA notifies CDSS yearly of the State's annual EFAP allocation amount. CDSS sends a letter to each ERA as soon as possible after this notification, stating the ERA's tentative reimbursement amount from which claims for reimbursement may be made.

The yearly tentative reimbursement amount is broken into four quarters, based on the Federal fiscal year, which runs from October 1 through September 30. The four quarters, with the claim due dates, are as follows:

- | | |
|---------------------------------|--|
| • October 1 through December 31 | 1 st quarter claim due January 31 |
| • January 1 through March 31 | 2 nd quarter claim due April 30 |
| • April 1 through June 30 | 3 rd quarter claim due July 31 |
| • July 1 through September 30 | 4 th quarter claim due October 31 |

(17.3) Claiming Process

The ERAs must maintain CDSS required financial records documenting all TEFAP related administrative expenses. Financial documentation (invoices) will be reviewed during compliance monitoring visits and may be reviewed upon request.

The ERAs must submit by mail or email the CDSS approved Request for Reimbursement of Expenses form. *(See the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures> or contact your TEFAP Program Consultant for the Request for Reimbursement of Expenses form.)*

All claims must be submitted with acceptable documentation of allowable program expenditures. A separate request package must be submitted for each quarter in which expenses are incurred.

Acceptable documentation to support expenditures includes:

- A description of the allocation methodology used to calculate the expenses; and,
- A copy of the ERAs accounting ledger pertinent to TEFAP costs;
- An appropriate summary of expenses for the submitted quarter; or,
- A printout from an automated software program that summarizes TEFAP expenses.

(17.4) Monetary Penalties for Late Reports

Reimbursement claims will be **paid out based on completed reports in CDMS**. A CDSS Program Consultant will review each food bank's reports in CDMS for accuracy and completeness. If all required reports are complete at the time of reimbursement, the food bank will receive its entire quarterly allocation. **However, if the reports are incomplete at the time of reimbursement, the food bank's quarterly allocation may be deducted based on the number of incomplete reports.**

The two reports required are the commodity inventory report and the HHP/ CFP report. *(See Section 15: Records and Reports for due dates.)*

Payment of quarterly reimbursement claims will be as follows:

One report complete = 50% of allocation paid
Two reports complete = 100% of allocation paid

ERAs will not lose any of their allocation. Any allocations not paid will be retained until all required reports are completed and submitted.

(17.5) Allowable and Restricted Costs

The definition of direct expenses is revised to include both direct and indirect costs attributable to TEFAP (7 CFR, 251.8(e)).

Direct and indirect allowable costs for TEFAP expenses, as outlined in Federal regulations, include:

- Intrastate transportation, storage, handling, distribution, repackaging, and processing;
- Salaries of persons directly administering program and program-related expenses;
- Fringe benefits and travel expenses;
- Rent and utilities;
- Accounting, auditing, and other administrative services;
- Computer services;
- Costs related to training;
- Costs associated with determination of eligibility, verification, and documentation;
- Costs associated with providing information to persons receiving USDA commodities regarding proper storage and preparation;
- Costs for publication of times and locations of distributions;

- Meals provided to volunteers, i.e., non-salaried staff, for services rendered during the distribution of USDA commodities. Meal cost must be reasonable and adequately documented with volunteer's name, hours worked, receipts, invoices, or other evidence of the cost of providing meals, and the volunteer's signature for each meal received.

An ERA may not rent equipment from itself or charge depreciation, but it may charge a rental or use fee for storage space, and may charge a share of repair and maintenance fees for vehicles and equipment. If a cost category contains multiple programs, the ERA must identify the portion that applies to TEFAP expenses. The ERA must attach the cost allocation methodology used to determine the appropriate percentage charged to TEFAP.

Expenses for operational costs and warehouse staff salaries/benefits will be cost allocated to TEFAP based on a percentage of the total pounds of food distributed under TEFAP guidelines in the previous calendar quarter, and the total pounds of food distributed by all programs in the same quarter.

Emergency Food for Families Fund (formally Tax Check-Off) and any other donated food that is distributed under TEFAP guidelines would be counted in the TEFAP poundage. However, ERAs must be able to provide accurate documentation of Emergency Food for Families Fund and other donated food distributed under TEFAP guidelines. Please note that any food distributed through other non-TEFAP programs would not be included in the TEFAP total poundage.

The ERA expenditures on salaries/benefits of non-warehouse program staff will utilize a different methodology than the one used for operational and warehouse staff costs. For non-warehouse program staff:

- the ERA will periodically time study the hours worked by program staff to determine the percentage of personnel costs that can be allocated and charged to TEFAP.
- All activities performed by (non-warehouse) program staff must be included in the time study, regardless of whether it involves the actual receipt or handling of food (e.g., fundraising activities).
- When reporting time to TEFAP, ERAs will report only those activities that directly support TEFAP.
- Time studies will need to be conducted for a one-week period during the first month of every quarter.

To determine the percentage of costs that can be allocated to TEFAP, ERAs will refer to their completed time study for the calendar quarter and divide the number of hours spent on TEFAP activities by the total number of hours spent on all activities. The calculated percentage is applied to the program staffs' total monthly salaries to determine the allowable amount that can be charged to EFAP (EFAP Policy Notice 10-01).

(17.6) Capital Expenditures

The ERAs must have prior approval from CDSS before purchasing capital equipment. A letter of request must be submitted which includes the following:

- 1) Description of the item of equipment that the ERA intends to purchase,
- 2) Description of the program need that the item will meet,
- 3) An analysis of the cost effectiveness of purchasing the item, rather than renting or leasing, and
- 4) Three separate bids for the item

All equipment purchased with TEFAP funds becomes the property of USDA and may not be given away, traded, or sold, without permission from CDSS. The ERAs must keep separate accounting records for all capital expenditures. These records must be easily accessible for review by CDSS and USDA.

(17.7) Cash Advances

If the Federal budget is passed timely, ERAs may request a cash advance of up to 10 percent (10%) of their tentative reimbursement amount at the beginning of the FFY. Requests for cash advances must be submitted to CDSS after ERAs are notified of their tentative reimbursement amount.

Cash advance payments may be made to ERAs under the following circumstances:

- An ERA may request advance payment of an amount up to 10 percent of its projected annual allowable TEFAP costs, not to exceed 10 percent of their tentative annual allocation of Federal funds for the same FFY;
- The request for the Cash Advance Form must be made by phone or letter. Once the form is filled out it must be returned to CDSS for final approval;
- Advance payments are scheduled by CDSS for repayment by equal deductions from subsequent requests for reimbursement. Repayment of all cash advances must be made during the same FFY for which it was received, i.e., an advance received in January will be scheduled for liquidation in two equal deductions from reimbursement requests for (1) April-June, and (2) July-September, all in the same FFY.

(17.8) Emergency Food for Families Fund (formerly Tax Check-Off)

During the 1997-98 legislative sessions, AB 2366 established a new voluntary contribution check-off on the state income tax form. The bill had a sunset date; however, subsequent legislation has authorized the Emergency Food for Families Fund to continue.

Each year Emergency Food for Families contribution funds are allocated to each county ERA by distributing a base amount, usually \$5,000, with the remaining allocated according to the 60/40 methodology.

In order to receive the funds, an ERA must submit a claim, no later than July 31st, and correctly dated receipts for food purchased during the fiscal year. The food purchased must be distributed to recipients free of charge, there can be no hold back for administrative purposes, and no shared maintenance fees may be charged.

(18.1) Complaints

The CDSS must investigate promptly complaints received in connection with the distribution or use of USDA commodities. Irregularities, which are disclosed, must be corrected immediately. Serious irregularities must be reported to USDA. CDSS must maintain on file evidence of investigations and actions. USDA reserves the right to make investigations and have the final determination as to when a complaint has been properly handled (7 CFR, 250.15(d)).

(18.2) ERA Responsibility

The ERAs must respond to CDSS as required in a timely manner to inquiries CDSS receives from the Legislature, USDA, the public, and other sources. All complaints must be researched and responded to by the ERA.

If evidence of wrongdoing is discovered:

- The ERA is informed and is then required to submit a corrective action plan to CDSS for approval.
- If CDSS does not approve the submitted plan, CDSS may require the ERA to revise the plan or may prepare its own plan that the ERA is required to implement.

If no evidence of impropriety or wrongdoing is found:

- CDSS will prepare a report of findings and explanations.

In every case, the complainant and the ERA will receive a response from CDSS.

(18.3) Complaints Received by ERAs

When an ERA or distribution site encounters a problem, or receives a complaint that cannot be rectified at the local level, the ERA must immediately notify their CDSS Program Consultant. The initial notification must be followed up by a written report of the problem or complaint. CDSS will consider the complaint and issue instructions and recommendations on a case-by-case basis. The report should include the following information:

- 1) Entity/Person raising the issue
- 2) Details about the problem or complaint
- 3) Any findings
- 4) Action taken to resolve the situation

(18.4) USDA Food Complaints

Complaints about USDA commodities must be handled immediately to prevent use of foods that may be unfit for human consumption. If a complaint is received, the ERA must (USDA Website):

- 1) Immediately isolate and place all remaining product involved in the complaint on hold;
- 2) Immediately contact CDSS Program Consultant by telephone and provide the following information:
 - The name of the product and the Material ID# if known (e.g., canned beef-100127);
 - A description of the problem, including any known incidents or facts involved, such as injury or sickness;
 - Sales Order or Item number(s) of the product(s) (The Sales Order number can be found on both direct shipment and CEFL bills of lading. The item number can be found on direct shipment bill of lading);
 - Amount of product involved and amount of remaining product on hold;
 - Date the product was received by the ERA and the package date, which should be printed on the outside of the case;
 - Temperature in which the product was stored and the temperature conditions of distribution;
 - Name of person at ERA to contact for investigation and follow-up;
- 3) Follow-up with a complete and accurate written report to CDSS that includes the above information.

The CDSS will decide whether the complaint can be resolved at the state level, and if not CDSS will work with USDA to make a determination about the seriousness of the complaint. USDA will decide the appropriate course of action on complaints that are considered serious.

This section contains information regarding forms and charts used in TEFAP. Forms and charts are available by email, regular mail, contacting your TEFAP Program Consultant, or via the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures>.

(19.1) Inventory Reports

- Inventory Report – USDA Commodities

Inventory reporting is done through TEFAP's automated Commodity Distribution Management System (CDMS) located on the internet at <https://secure.dss.ca.gov/wtw/EFAP/>. CDMS is a secured, password-protected system. Login credentials are required and assigned to ERAs. It is the responsibility of the ERA to inform CDSS when a new employee requires a login and password as well as when an employee, who had a login account, is no longer employed by the ERA.

(19.2) Commodity Reports

- Commodity Receipt Report – Problem Load (CRR)
- Commodity Loss Report (CLR)
- How to File a Complaint about USDA commodities

The forms listed above are available at the end of this section and in Adobe Acrobat format on the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures>.

(19.3) Certification and Eligibility Documentation

- EFA-7 – TEFAP Certification of Eligibility

(See the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures> or contact your TEFAP Program Consultant for the EFA-7 form.) Only one version of the EFA-7 may be used. All distribution sites must use the EFA-7 dated 03/2011.

(19.4) TEFAP Participation Reports

- Household Participation Report (HHP)
- Congregate Feeding Participation Report (CFP)

In addition to the inventory reports, the reports listed above are also managed through CDMS at <https://secure.dss.cahwnet.gov/wtw/EFAP/>.

(19.5) Request for Reimbursement of Expenses

(See the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures> or contact your TEFAP Program Consultant for the Request for Reimbursement of Expenses form.) Please note that the internet version is in Adobe Acrobat format.

(19.6) TEFAP Income Eligibility Chart

(See the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures> or contact your TEFAP Program Consultant for the TEFAP Income Eligibility chart.)

The chart is available in both English and Spanish. Please post the chart in the appropriate place, as instructed in this manual.

(19.7) Distribution Site Signage

- “And Justice for All” Poster
- Current English and Spanish Income Guidelines
- Written Beneficiary of Rights (if faith-based organization)

The “And Justice for All” sign required to be posted at distribution sites is available from CDSS. Please contact your CDSS Program Consultant to obtain the sign or download it on the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures>.

(19.8) Recommended Distribution Site Agreement

(See the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures> or contact your TEFAP Program Consultant for the recommended distribution site agreement.)

(19.9) Alternate Pick-up Request Form:

(See the internet at <http://www.cdss.ca.gov/inforesources/EFAP/Forms-and-Brochures> or contact your TEFAP Program Consultant for the Alternate Pick-up form.) Please note that the internet version is in Adobe Acrobat format. The chart is available in both English and Spanish.